



A G E N D A

General Plan/LCP Implementation Committee

August 15, 2007

3:30 p.m.

City Council Chambers

1. Approve Action Minutes from July 18, 2007 Meeting
Attachment No. 1 3:30-3:35
2. General Plan/LCP Implementation - Master Task List
Update From Staff and Committee Comments
Attachment No. 2 3:35-3:45
3. Zoning Code Rewrite – Approach to Zoning Code Update
Discuss Approach to Zoning Code Update paper and review
draft standards for Child Care Facilities
Attachment No. 3 3:45-4:30
4. Zoning Code Rewrite – Non-Conforming Structures and Uses
Discuss attached paper and provide direction to staff
Attachment No. 4 4:30-5:10
5. Items for Future Agenda 5:10- 5:20
6. Public Comments on non-agenda items 5:20-5:30

Attachment No. 1



CITY OF NEWPORT BEACH GENERAL PLAN/LCP IMPLEMENTATION COMMITTEE

DRAFT ACTION MINUTES July 18, 2007

Action Minutes of the General Plan/LCP Implementation Committee held at the City Council Chambers, City of Newport Beach, on **Wednesday, July 18, 2007**

Members Present:

X	Ed Selich, Mayor Pro Tem, Chairman
E	Steve Rosansky, Mayor
X	Leslie Daigle, Council Member
X	Barry Eaton, Planning Commissioner
X	Robert Hawkins, Planning Commissioner
X	Michael Toerge, Planning Commissioner

Advisory Group Members Present:

X	Mark Cross
	Larry Frapwell
	William Guidero
X	Ian Harrison
X	Brion Jeannette
	Don Krotee
X	Todd Schooler
	Kevin Weeda
X	Dennis Wood

Staff Representatives:

X	Sharon Wood, Assistant City Manager
X	David Lepo, Planning Director
	Robin Clauson, City Attorney
X	James Campbell, Senior Planner
X	Gregg Ramirez, Senior Planner

E = Excused Absence

Committee Actions

1. Agenda Item No. 3 - Zoning Code Rewrite Zoning District Development Regulations

Motion: Committee directed staff to include setback plane on commercial projects that don not have a zero setback and change revise the findings for projects proposing to exceed the "base" height limit. The Committee also directed staff to analyze the lot sized in the commercial districts and revise the development regulations accordingly.

Vote: 5 Ayes, 1 Absent

Attachment No. 2

GENERAL PLAN IMPLEMENTATION TASKS

1. Interim Zoning Resolution (including ability to require development agreements)
*Staff, January 9, 2007 - **Complete***
2. Procedures to implement single- and two-family design policies
*Staff, March 27, 2007 - **Complete***
3. Zoning Code and Specific Plan rewrite
Consultant, with staff input and review, January 2008
4. CLUP amendment
Staff
 - *April 27, 2007 to Coastal Commission – **Complete***
 - *November 2007 Coastal Commission Hearing*
5. Housing Element certification by HCD
EIP and staff, August 31, 2007
6. Park Dedication Fee (Quimby Act)
*Staff, April 10, 2007- **Complete***
7. ED Strategic Plan
Staff, ADE and EDC, July 10, 2007
8. Fair Share Fee update
Consultant, August 28, 2007
9. Airport Area infrastructure study and fee(s)
ROMA and Fair Share Consultant, TBD
10. Inclusionary Housing Ordinance and In-lieu fee
Consultant (amend existing contract to update fee and incorporate new Housing Element policies), July 24, 2007
11. Parking Requirements and Management
Staff, EDC, TBD
12. LCP Implementation Plan
Staff, concurrent with/trailing Zoning Code rewrite

13. City Council Ordinance on development agreements
*Staff, February 27, 2007 - **Complete***
14. Traffic signal synchronization
Consultant and Public Works staff, master plan June 2007
15. PC rewrite/revisions
*Property owners for major ones, their schedule
Staff or consultant for smaller ones, with Zoning rewrite or second phase,
TBD*
16. Banning Ranch Pre-Annexation and Development Agreement
City Council, staff and property owners, TBD
17. Harbor Area Management Plan
Consultants, staff and Harbor Commission, September 2008
18. Run-off and Pollution Reduction Plan
Coastal/Bay Water Quality Committee and staff, ongoing
19. Database refinements and maintenance
Staff, refinements TBD, maintenance ongoing
20. Fiscal Impact Model training
*ADE and staff, March 29, 2007- **Complete***
21. Traffic Phasing Ordinance revision re: NBTAM
Staff, July 10, 2007
22. Measure S Guidelines revision re: variable FAR
Staff, October 23, 2007

Lower Priority

- Municipal Code amendments re: property maintenance standards
- Building Code amendments re: green buildings
- Amend City Council Policies on historic, archaeo and paleo resources
- Funding and priority program for construction of noise barriers along arterials

Attachment No. 3

Approach to Zoning Code Update

A. Project Goals.

Besides implementing the updated General Plan and satisfying State mandates, the update of the Newport Beach Zoning Code has three fundamental goals:

- Prepare a user friendly and properly organized document.
- Reduce the administrative burden on the City staff and Planning Commission.
- Increase certainty for the community and applicants/developers.

We have noticed a tendency in the committee and staff comments on the previously submitted use tables to prefer requiring Conditional Use Permits for what might have historically been perceived as more troublesome land uses (i.e., uses that generate noise or traffic; are of a certain size; are open for long hours of operation, etc.). It might be helpful to clearly express our consultant team's approach, which is to generally allow more uses by right than are allowed under the current code, provided that the uses comply with detailed and prescriptive development and operational standards. Allowing more uses by right with appropriate standards reduces the administrative burden on the City staff and Planning Commission. Providing more detailed standards for those uses reduces the amount of time and money required for an applicant/developer to find out whether the City will approve, deny, or require modifications to a proposed project. This approach will result in an updated code that is seemingly longer than the existing code due to the inclusion of detailed, prescriptive development and operational standards. This does not mean, however, that the updated code will be more complex. In fact, the updated code will be user-friendly and far easier to navigate than the existing code.

B. Zoning Districts, Allowable Land Uses, and Permit Requirements.

Describing the zoning districts, identifying the land uses allowed within the zoning districts, and indicating the types of City approval required for each use is one of the most important tasks in a zoning code update. Typically this information is summarized in table format, referred to as use tables. The use tables indicate which uses are allowed by right and which are allowed with discretionary review and conditions to mitigate possible adverse effects in each of the zoning districts. Also included in the use tables are references to development standards, if applicable.

C. Development Standards.

Zoning codes typically contain three types of development standards that regulate project planning, design, and operation.

1. **Zone-specific standards.** These standards can address a wide variety of project location and design details within each zoning district. The most typical standards include setback requirements, height limits, lot coverage, and density/intensity limitations (e.g., FAR).
2. **Standards for specific land uses.** These standards apply to the development and operation of specific land uses that are known to have similar adverse effects regardless of their location (e.g., adult businesses, alcoholic beverage sales, child day care facilities, eating establishments, home occupations, outdoor display and sales, services stations, etc.)

- 3. General site planning and development standards.** These standards apply to a variety of land uses regardless of the applicable zoning district. These address site access requirements; fences, hedges, and walls; buffering and screening; noise regulations; outdoor lighting standards; performance standards (i.e., air quality, glare, vibration); etc.).

Communities generally obtain higher quality developments by clearly communicating their standards for development and by ensuring their professional planning staffs and review authorities have a usable and accessible zoning code to assist project applicants/developers in understanding and fulfilling the community's expectations. Additionally, a zoning code that clearly sets out the community's expectations provides a higher level of certainty as long as the community's expectations are properly fulfilled.

Part 4

Standards for Specific Land Uses

20.60.010 – Child Day Care Facilities

This Section provides standards for the location and operation of day care facilities for children in compliance with State law. These standards shall apply in addition to requirements imposed by the California Department of Social Services.

- A. Small family child day care homes (8 or fewer children).** As required by State law (See Health and Safety Code Section 1597.30 et seq. (Family Day Care Homes), small family child day care homes (8 or fewer children) shall be considered a residential use of property and shall be allowed within a single-family residence located in a residential zoning district with no City land use permits or clearances required.
- B. Large Family Child Day Care Homes (9-14 children).** Large family child day care homes (9 to 14 children) shall comply with the following standards:
1. **Licensing.** The operator of a large family child day care home shall obtain and maintain a valid license from the California Department of Social Services in compliance with California Code of Regulations, Title 22, Division 12 (Child Care Facility Licensing Requirements).
 2. **Care provider's residence.** The large family child day care home shall be the principal residence of the care provider and the use shall be clearly residential in character and shall be incidental and secondary to the use of the property as a residence.
 3. **Other codes and standards.** Each large family child day care home shall comply with applicable Building Code and Fire Code standards and all State standards for the operation of large family child day care homes.
 4. **Separation.** A large family child day care home within a residential zoning district shall be located at least 500 feet away from an existing large family child day care home, other day care facility, or group home facility.
 5. **Off-street parking and drop-off/pick-up area.**
 - a. A facility shall provide an off-street parking space for each employee. A minimum of two off-street parking spaces shall be provided as a drop-off and pick-up area. The spaces shall be in addition to those required for the dwelling unit in compliance with Chapter xx.xx (Off-Street Parking and Loading). A driveway may be used to provide the spaces, provided the

Traffic Engineer approves the arrangement based on traffic and pedestrian safety considerations.

- b. A facility located on a through street classified as a collector or arterial street shall provide a drop-off and pick-up area that does not require backing into the street.
6. **Noise.** In order to protect adjacent residential dwellings from noise impacts, a facility within a residential district may only operate a maximum of 14 hours for each day between the hours of 6:00 a.m. and 8:00 p.m. and may only conduct outdoor activities between the hours of 7:00 a.m. and 7:00 p.m.
7. **Permit processing requirements.** The Director shall approve a Minor Use Permit application if the Director determines that the proposed large family child day care home would comply with the standards in this Subsection B.

C. Standards for child day care centers (15 or more children). Child day care centers shall comply with the following standards, in addition to the standards contained in Subsection B (Standards for large family child day care homes), above:

1. **Fencing.** A six-foot high solid decorative fence or wall shall be constructed on all property lines, except in the front yard or within a corner cutoff intersection area. Fences or walls shall provide for safety with controlled points of entry. A minimum three-foot wide landscaped area shall be provided adjacent to the wall/fence and shall include a dense hedge of evergreen shrubs a minimum of four feet in height at the time of planting.
2. **Parcel size.** The minimum parcel size for a child day care center shall be 10,000 square feet.
3. **Separation.** The minimum separation between the main assembly building of the center and a residential zoning district shall be 30 feet.
4. **Play areas and pools.** Each facility shall have both indoor and outdoor play areas in compliance with State requirements. An on-site outdoor play area of not less than 75 square feet per child, but in no case shall less than 450 square feet per facility, shall be required. The outdoor play area shall not be located in the front yard. A four-foot-high fence shall enclose an outdoor play areas and a five-foot high fence shall enclose a pool.
5. **Off-street parking and drop-off/pick-up standards.** Each facility shall provide an off-street parking space for each employee and a separate, off-street parking space for dropping-off and picking-up children. Spaces shall comply with the size requirements for parking spaces in Chapter xx.xx (Off-Street Parking and

Loading). The design of the drop-off and pick-up area shall not require backing into any street.

Attachment No. 4

Nonconforming Structures and Uses

A. What is a “Nonconforming Structure or Use”?

A nonconforming structure or use is one that was lawfully erected or established in compliance with the zoning regulations of the city at the time, but which does not currently conform with the property development regulations or land use regulations prescribed for the zoning district in which the structure or use is located. A nonconforming situation may be caused either by reason of adoption or amendment of the zoning code or by reason of annexation of territory to the city.

B. What remedies are available to reduce or eliminate nonconformities?

Remedies for eliminating nonconforming uses;

- Change of use by the property owner to a conforming use
- Abandonment of the use for more than the allowed period of time, in which case the legal nonconforming status is lost (currently 180 days)
- Amortization or allowing the nonconforming use to continue for a specific period of time that would allow recovery of the established or assessed value or investment in the property by the owner
- Purchase by the city

Remedies for eliminating nonconforming structures;

- Correction by the property owner of the nonconforming conditions of the structure
- Destruction by fire or other peril of at least 50% of the value of the structure in which case the rebuilt structure would be required to meet all current regulations (Newport Beach currently uses 90%)
- Amortization or allowing the nonconforming structure to continue for a specific period of time that would allow recovery of the established or assessed value or investment in the property by the owner
- Purchase by the city

In general, there are four options for dealing with nonconformities:

- Phase them out over time - amortization or purchase by city
- Maintain the status quo - allow them to remain with no changes/expansion
- Allow limited modification and expansion
- Change zoning standards to make certain nonconforming situations conforming.

C. What are the issues?

Some might ask, "What is the problem with just 'grandfathering' nonconformities and allowing them to run their course naturally (without prescribed time periods), either by change of use or demolition"? The problem with allowing the continuance of nonconforming structures and uses is that they reduce the effectiveness of what a community is trying to accomplish through its general plan, as implemented by its zoning regulations. The continued existence of nonconforming uses, and to a lesser extent nonconforming structures, undermines what a community is seeking to achieve when it establishes specific allowable uses for a zoning district or specific development standards for structures.

At the same time, communities are reluctant to require the removal of an ongoing business or existing structure, often reflecting substantial financial investments, just because they fail to comply with current zoning requirements. The "solution" has been to subject nonconforming uses and structures to a diverse assortment of restrictions, all intended to hasten the day when the particular structure or use either "disappears" or comes into compliance with the existing zoning regulations.

Of course neither of these usually happen on their own, so communities enact "amortization schedules" and specify various periods of time in which the nonconforming structures or uses are given to either comply with the new regulations or cease to exist. The period of time given to comply is theoretically based on the amount of investment or value the owner has in the structure or use - the greater the investment (e.g., a concrete tilt up building vs. a wood frame building) the longer period of time an owner is given to recoup the investment before the nonconforming structure or use must be terminated or brought into conformance.

Periods of time given to amortize an investment can range from as short as one to three years for a use that occupies essentially vacant land (e.g., a contractor's storage yard) to 20 or more years for substantial, long-lasting construction.

D. Background - General Plan

The General Plan contains the following policies regarding nonconforming residential and nonresidential structures, but is generally silent on nonconforming uses. Policy HB 3.2 touches slightly on use by suggesting the possible amortization of non-water-dependent uses.

LU 6.2.2 Allowing Rebuilding

Legal nonconforming residential structures shall be brought into conformity in an equitable, reasonable, and timely manner as rebuilding occurs. Limited renovations that improve the physical quality and character of the buildings may be allowed. Rebuilding after catastrophic damage or destruction due to a natural event, an act of public enemy, or accident may be allowed in limited circumstances that do not conflict with the goals of the Land Use Element.

LU 6.13.5 Rebuilding of Non-Conforming Structures (Balboa Village)

Permit existing commercial buildings that exceed the permitted development intensities to be renovated, upgraded, or reconstructed to their pre-existing intensity and, at a minimum, number of parking spaces.

LU 6.20.5 Complement the Scale and Form of Existing Development (CDM)

Permit new commercial development at a maximum intensity of 0.75 FAR, but allow existing commercial buildings that exceed this intensity to be renovated, upgraded, or reconstructed to their pre-existing intensity and, at a minimum, number of parking spaces.

HB 3.2 Re-Use of Properties

Discourage re-use of properties that result in the reduction of water-dependent commercial uses. Allow the re-use of properties that assure water-dependent uses remain, especially in those areas with adequate infrastructure and parcels suitable for redevelopment as an integrated project.

E. Discussion

General Plan policy LU 6.2.2 seems to imply that “limited renovations” (alterations) to a nonconforming residential structure may be allowed as long as the renovations improve the “physical quality and character of the building” and comply with current development regulations. We may infer from this that if something more than “limited renovations” are requested (e.g., additional square footage) then all existing nonconformities would be required to be corrected and the entire structure brought into compliance with current development regulations.

The question here is, what are “limited renovations” and what is the threshold that triggers the requirement for all nonconformities to be eliminated? Also, since the current zoning regulations for nonconforming structures allows additions (up to 25% by right annually, 50% with approval of a modification permit, and 75% with approval of a use permit) there seems to be a conflict between the General Plan policy, which does not mention additions and current zoning regulations, which allow them.

General Plan policies LU 6.13.5 and LU 6.20.5 indicate that if a nonconforming commercial structure in either Balboa Village or Corona del Mar currently exceeds the permitted development intensities and is subsequently destroyed, it is allowed to be “renovated, upgraded, or reconstructed to their (its) pre-existing intensity and, at a minimum, number of parking spaces.”

Since the current zoning regulations for nonconforming structures allows alterations and additions as described above (25%, 50%, 75%), the current zoning

regulations are consistent with the General Policy with the exception of the allowance for “reconstruction” after the structure has been destroyed. Here, the current regulations allow reconstruction of a nonconforming structure if less than 90% of the structure has been destroyed based on the structure’s replacement value. If destroyed by more than 90%, the structure cannot be reconstructed to its prior existing condition unless a use permit is approved by the Director based on certain findings. Refer to the full text of the current regulations, attached.

Policy HB 3.2 would seem to indicate that if a nonconforming structure is occupied by a water-dependent use, then the structure should be allowed to remain in its nonconforming condition indefinitely. The question here is, what happens if a new use occupies the structure that is not water-dependent? Should there then be an amortization period put in place that would require the structure to be brought into compliance with current regulations? Also, there needs to be a clear understanding of what constitutes a “water-dependent commercial use”.

F. Background - Zoning Code

The current Zoning Code defines nonconforming structures and uses as follows;

Nonconforming Structure: A structure that was lawfully erected, but which does not conform with the property development regulations prescribed in the regulations for the district in which the structure is located by reason of adoption or amendment of the Zoning Code or by reason of annexation of territory to the City.

Nonconforming Use: A use of a structure or land that was lawfully established and maintained, but which does not conform with the use regulations or required conditions for the district in which it is located by reason of adoption or amendment of the Zoning Code or by reason of annexation of territory to the City.

These are standard definitions adopted by most communities and do not require significant, if any, revisions.

Chapter 20.62 of the current Zoning Code states that the purpose of the Chapter is as follows;

20.62.010 Purpose

This chapter establishes procedures for the continuance or abatement of existing structures and uses that do not conform to the provisions of the Zoning Code and the goals and policies of the General Plan, and which may be detrimental to the orderly development of the City and adverse to the general welfare of persons and property. This chapter is intended to limit the expansion of nonconforming structures and uses to the maximum

extent feasible, to establish the criteria under which they may be continued or possibly expanded, and to bring these structures and uses into conformity in an equitable, reasonable and timely manner, without infringing upon the constitutional rights of property owners.

With regard to alterations and additions to nonconforming structures, current regulations allow the following:

1. Alteration of up to 25 percent of the structural elements within any 12 month period may be permitted by right.

An increase of up to 25 percent of the gross floor area within any 12 month period may be permitted by right.

2. Alteration of up to 50 percent of the structural elements within any 12 month period may be permitted upon the approval of a modification permit.

An increase of up to 50 percent of the gross floor area within any 12 month period may be permitted upon the approval of a modification permit.

3. Alteration of up to 75 percent of the structural elements within any 12 month period may be permitted upon the approval of a use permit by the Planning Director, subject to findings.

An increase of up to 75 percent of the gross floor area within any 12 month period may be permitted upon the approval of a use permit by the Planning Director, subject to findings.

The regulations go on to say, "No addition shall cause an increase in the structure's inconsistency with the regulations of the Zoning Code." We assume that this means that all additions must be completely in compliance with current setback requirements, height restrictions, floor area limits, etc. regardless of preexisting conditions to the contrary.

With regard to the abatement of nonconforming uses, current regulations require the following:

Time Periods for Abatement

1. Nonconforming Use of Land When No Structure Is Involved. In any district the nonconforming use of land wherein no structure is involved shall be abated within one year from the date this code become effective and any future use of such land shall conform to the provisions of this code.

2. Nonconforming Use of Land Involving a Structure. In any district, the nonconforming uses of land wherein a structure is involved shall be discontinued within the time limits specified by the Planning Commission, which shall not exceed the following maximum time limits:
 - a. Residential districts: 5 years
 - b. Nonresidential districts: 10 years

G. Discussion

With regard to the above purpose statement from the current Zoning Code, which states that, "This chapter is intended to limit the expansion of nonconforming structures and uses to the maximum extent feasible..." there is little in the current regulations to implement that purpose or goal. As can be seen in the allowances for structural alterations and additions to nonconforming structures (above), the regulations appear quite generous considering the purpose statement to "limit the expansion of nonconforming structures and uses to the maximum extent feasible..."

With regard to the current provisions for the abatement of nonconforming uses, staff cannot remember processing an abatement procedure.

H. Considerations for Discussion

- Given that the current nonconforming regulations are, "intended to limit the expansion of nonconforming structures and uses to the maximum extent feasible." what are the Committee's expectations for nonconforming structures and uses for the future? Should regulations be put in place to protect them and allow for improvement and expansion or should the City seek to aggressively eliminate nonconforming situations?
- With the exception of some particular problem uses, does the Committee feel the need to have an abatement time table for all nonconforming uses as is the present case? Staff has indicated that they cannot remember ever using the existing abatement process or timetable.
- General Plan policies for nonconforming commercial structures in Balboa Village (LU 6.13.5) and CDM (LU 6.20.5), above appear to support allowing renovations, upgrading, and reconstruction of nonconforming structures to their preexisting conditions. This would seem to allow a property owner to voluntarily demolish a structure and then reconstruct (rebuild) it back to the same nonconforming condition that existed before the demolition. Also, the policies seem to indicate that additional parking need not be provided beyond that which existed at the time of demolition. Is this the Committee's intent?

- Also, these same policies do not specifically mention the ability to add additional floor space, only “renovations and upgrading”. However, current regulations do allow additions as outlined in section F, above. These regulations apply citywide to residential and nonresidential uses. We assume that any additional square footage allowed by these regulations would be required to conform to current development regulations, including adding the required number of parking spaces. Does the Committee want to continue to allow additions to nonconforming structures? Should there be limits on how much can be added at any one time? We do not see the reason for the current limitation and would like to discuss with the Committee.
- With regard to multi-family uses (2 or more units), State law requires that cities allow nonconforming structures that are involuntarily damaged or destroyed by fire, other catastrophic event, or the public enemy to be rebuilt back to their preexisting conditions unless the Council determines one or both of the following:
 1. The reconstruction, restoration, or rebuilding will be detrimental or injurious to the health, safety, or general welfare of persons residing or working in the neighborhood, or will be detrimental or injurious to property and improvements in the neighborhood, or
 2. The existing nonconforming use of the building or structure would be more appropriately moved to a zone in which the use is permitted, or that there no longer exists a zone in which the existing nonconforming use is permitted.

The question here is, does the Committee see a need for making either of the determinations provided above?

- Another consideration concerning residential structures is whether or not a nonconforming single-family structure should be allowed to be reconstructed to its preexisting condition following an involuntary destruction? Although not required to do so, many communities do allow nonconforming single-family structures to be rebuilt back to their preexisting conditions if involuntarily destroyed. Does the Committee want to consider allowing nonconforming single-family structures to be rebuilt back to their preexisting conditions?
- Finally, whatever regulations are adopted to deal with nonconformities, we must keep in mind that documentation of the extent of original nonconformity and of permitted expansion or alteration is the key to implementing any policy on nonconformity. The City should document nonconforming uses, including extent and location, systematically inspect them, track changes, and eliminate nonconforming uses that:
 - have changed the original use

- have changed location,
- have been discontinued for more than the specified time limit, or
- are a public nuisance